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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA AIRBORNE EXPRESS

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

MAR 16 1993
FCC MAIL ROOM

Re: CC Docket No. 92-297

These are comments of Joseph D. Carney & Associates
as requested by CC Docket No. 92-297

1. There is no need to set aside any portion of the 28GHz band for MMDS licensees. Those truly interested MMDS licenses have already filed waiver applications. The already filed waiver applications, including those of MMDS licenses, should have a set-aside or the equivalent made available and this would be in the public interest as discussed in this comment letter.
2. We like the structure identified in Paragraph 20 of two blocks of 1000 megahertz each as opposed to the smaller allocations suggested in Paragraph 21. Competition with wireline franchised cable companies, wireless cable companies, low-power television, domestic fixed satellites, broadcast television stations, and other video services will be enhanced only with adequate spectrum allocations to attract financing adequate to build, equip and market the new competitors. Our due diligence suggested that financing will be attracted only if the number of video channels in the license is greater than that of existing MMDS competitors, who are, and have been, rapidly absorbing available venture capital and other risk capital. The right to use the spectrum allocation for other services, in addition to video, is important for the same reason. The Commission has recognized the importance of new viable competitors (See Paragraph 30, seventh sentence). Smaller spectrum allocation will weaken the viability of the new competitors.
3. LMDS licensees should be allowed to elect common or non-common carrier status to best suite the marketplace. LMDS licenses should be able to elect alternatives for

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different services, e.g., one status for video, one status for other signals.

4. Services areas should be at least MSA sized. Larger areas are preferable and will facilitate financing and result in more service, faster, including faster service to rural areas. Larger areas permit the licensee to choose the most profitable areas to begin service, thus enhancing the entire business plan.
5. The 90% proposed minimum areas and populations in Paragraph 32 is too high. In some areas of Docket 92-297 the Commission recognizes the importance of marketplace forces (See Paragraph 26). Given the significant competitive alternatives, the Commission should permit the level of service put into place by the new competitors to be determined by marketplace forces.
6. Paragraph 33, Cross-Ownership. Preference should be given to existing waiver applicants who represent those persons most interested in entering leading edge developments in communication and competition. We are not in favor of cross-ownership restrictions.
7. Selection Process. The Commission failed to recognize that current waiver applicants are those most interested in providing this service. The Commission should not simply dismiss these applications. LMDS, like other new emerging technologies, will require effort from interested, motivated parties and financing sources. Our group has expended over \$20,000 on initial engineering matters, preliminarily evaluating financing with investment banking sources, researching the technology, and other matters related to providing video and other services in these bandwidths. If our applications are simply dismissed, why would this current group research new technologies and pursue licensing them through the waiver process as we have done so here? Since the Commission recognizes the need for competition and developing new technologies, its proposed action to dismiss the waiver applicants is counter-productive. Although this unique situation has resulted in apparently 971 waiver applicants, the Commission should be thrilled, not discouraged, that new technologies can attract parties willing to pursue them for mutual public/private benefit. If the Commission does not accord the waiver applicants some benefit simply because they are viewed by

the Commission as too numerous, the Commission will indeed be discouraging competition and innovation. The 971 waiver applicants is neither an "on-slaught" or a "flood" (See Paragraph 17 below).

In this situation, after market areas are designated, existing waiver applicants should be permitted to amend and a random lottery should be used to select licenses among the existing waiver applicants and applications. Thereafter, the remaining areas not applied for should be set for lottery selection.

8. The Commission statements regarding settlements do not reflect realistic needs in a commercial society. Pure random selection among existing waiver applicants should in all practicality eliminate the need for settlements. However, if applicants like the existing waiver applicants wish to "settle" they should be permitted to do so.

Reopening the process to new pools of applicants from whom licensees will be randomly chosen will not encourage early-technology innovators evidenced in the 971 waiver applications. Even though the existing waiver applicants might not be pioneers in true FCC sense, the significance of the pioneer-like interest shown by the existing waiver applicants cannot be ignored. Reopening the bandwidth now will only encourage speculation. The Commission should recognize and give a preference to existing waiver applicants.

9. Licensees should be able to sell up to 49.9% of a license to enhance freedom and creativity in financing arrangements.
10. In order to ensure viable competitive licensees, initial license terms should be at least 10 years, or longer.
11. Assuming existing waiver applicants are given preference, the "letter perfect" standard for amended applications should not pose an issue to those interested in this technology.
12. Post-card applications should not be used as these will encourage applications by those unable to perform and will unnecessarily consume staff resources.

13. One-to-a-market is good policy.
14. Firm financial commitments are costly and unnecessary. Based on our preliminary financial due diligence, firm financial commitments are likely to be irrelevant for the top 120 markets if the markets are sized right, the bandwidth kept at 1000 GHz, and the license term at least 10 years. They should not be required for either (i) existing waiver applicants, or (ii) the top 120 markets. If the technology is viable, and the Commission wishes to provide competition, the mere grant of the license should be sufficient to generate financial and business plans to develop, build, market and operate systems. Firm financial commitments today are extremely costly and pointless use of cash or borrowing capacity. Firm financial commitments for more than start-up costs of arranging the financing for the top 120 markets will waste all applicants money, resources and time.
15. One day filing windows are preferable. Existing waiver applicants should be granted credit for filing fees paid to date and be given the opportunity to amend these filings to the new filings.
16. The Commission positions and statements in Paragraphs 52 and 53 are in error. The 971 waiver applicants are not an "onslaught" or a "flood". This number tends to show interest from an innovative, competitive group which should be encouraged, not discouraged, by the Commission.
17. Implementing a lottery among existing waiver applicants and processing the winning waivers applicants before the Commission would be a proper and valid exercise of the Commission's power. In a world of 250,000,000+ U.S. individuals and an unlimited number of entities, a "flood" of applicants would be a vastly greater number than 971.

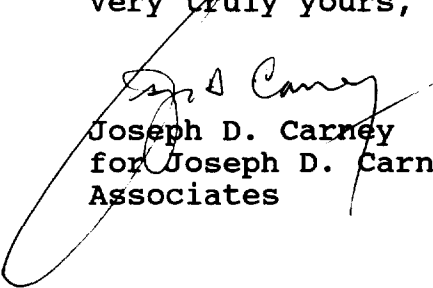
The Commission chose to use the word "flood". Using the water analogy chosen by the Commission, 971 drops of water is barely a half of a glass of water. A flood, in real life, is trillions and trillions of drops. Obviously, the current 971 waiver applicants are not a "flood" and should be acted on and given preferential treatment.

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18. We have no objection to, and support, Suite 12's Petition for Pioneer Preference.
19. The 971 current waiver applicants should be recognized as special "follow-on applicants" to pioneers: As innovators, who considered this opportunity without scheduled Commission lottery proceedings, they should be given special preferences.
20. Reg. Flex. Analysis

Many of existing waiver applicants, such as Joseph D. Carney & Associates, qualify as small businesses and should be given preferences and not simply dismissed.

Very truly yours,



Joseph D. Carney
for Joseph D. Carney &
Associates